

REMARKS

Claims 1-6 were pending in the application.

Claims 1-6 have been rejected.

Claims 1-6 have been amended, as shown above.

Claims 7-19 have been added.

Claims 1-19 are currently pending in the application.

I. REJECTION UNDER 35 U.S.C. § 112

Claims 1-6 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. MPEP § 2173; *In re Warmerdam*, 33 F.3d 1354, 1361, 31 U.S.P.Q.2d 1754, 1759 (Fed. Cir. 1994). Whether the claim leaves unclear the manner in which a recited feature may be implemented is irrelevant where the claim clearly covers all forms of implementation. MPEP § 2173.02; *In re Warmerdam*, 33 F.3d 1354, 1361, 31 U.S.P.Q.2d 1754, 1759 (Fed. Cir. 1994). Determining whether a claim is indefinite requires an analysis of whether one skilled in the art would understand the bounds of the claim when read in light of the specification. MPEP § 2173.02; *Credle v. Bond*, 25 F.3d 1566, 1576, 30 U.S.P.Q.2d 1911, 1919 (Fed. Cir. 1994). The claim is not indefinite if one skilled in the art would have no particular difficulty

in determining whether the recited feature has been implemented. MPEP § 2173.02; *In re Warmerdam*, 33 F.3d 1354, 1361, 31 U.S.P.Q.2d 1754, 1759 (Fed. Cir. 1994).

The Office Action rejected Claim 1 because the phrase “dependence upon the switching behavior of a measuring element” is “vague.” The Applicant has amended Claim 1 and replaced this phrase with “based on one or more measurements involving a measuring element positioned between the first and second substrates.” The Applicant respectfully notes that this phrase is clearly understandable by one skilled in the art.

The Office Action rejected Claims 1-6 because the phrase “measuring element” is “broad.” The Applicant respectfully notes that the Office Action contains no explanation as to how this phrase is vague or ambiguous. The Applicant also respectfully notes that the phrase “measuring element” is clearly understandable by one skilled in the art. The fact that this phrase may be “broad” does not establish any vagueness or ambiguity in the claims.

The Office Action rejected Claims 2-3 because the phrase “switching current of the measuring element” needs to be “more clearly defined” in the claims. The Office Action also rejected Claim 4 because the phrase “measuring [the] peak current in the measuring element” needs to be “more specific” in the claim. The Applicant has amended Claims 2-3 to recite “a current through the measuring element” and Claim 4 to recite “a peak current through the measuring element.” The Applicant respectfully notes that these phrases are clearly understandable by one skilled in the art.

The Office Action rejected Claim 6 because the phrase “the measuring element

comprises a pixel” is unclear. The Applicant has amended Claim 6 to recite that the “measuring element comprises a portion of the liquid crystal material.” The Applicant respectfully notes that this phrase would be clear to one skilled in the art.

Accordingly, the Applicant respectfully requests withdrawal of the § 112 rejection of Claims 1-6.

II. REJECTION UNDER 35 U.S.C. § 103

Claim 1 was rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,088,806 by McCartney et al. (“*McCartney*”). Claims 2 and 6 were rejected under 35 U.S.C. § 103 as being unpatentable over *McCartney* in view of U.S. Patent No. 5,349,367 by Wakita (“*Wakita*”). Claim 5 was rejected under 35 U.S.C. § 103 as being unpatentable over *McCartney* in view of U.S. Patent No. 4,425,027 by Portmann (“*Portmann*”). These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444

(Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).

If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

McCartney recites a liquid crystal display that includes an external temperature sensor and heater. (*Abstract*). The temperature sensor and heater keep the display at a preselected temperature. (*Col. 3, Lines 53-61*).

Regarding Claim 1, *McCartney* contains no mention of adjusting the “operating voltage” of the liquid crystal display. *McCartney* therefore fails to disclose, teach, or suggest means for

“adjusting an operating voltage” of a liquid crystal display device as recited in Claim 1. Also, *McCartney* contains no mention of a measuring element located between substrates in the liquid crystal display. *McCartney* therefore fails to disclose, teach, or suggest adjusting the operating voltage based on one or more measurements involving “a measuring element positioned between the first and second substrates” as recited in Claim 1. *Wakita* and *Portmann* similarly fail to disclose, teach, or suggest adjusting an “operating voltage” of a liquid crystal display device using a measuring element between the substrates as recited in Claim 1.

For these reasons, *McCartney*, *Wakita*, and *Portmann* fail to disclose, teach, or suggest the Applicant’s invention as recited in Claim 1 (and Claims 2-6 depending from Claim 1). Accordingly, the Applicant respectfully requests that the Examiner withdraw the § 103 rejection of Claims 1-6.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance and respectfully requests an early allowance of such claims.

SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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